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In re Application of
Patton et al.
Application No. 10/765790
Filing or 371(c) Date: 01/27/2004
Attorney Docket Number:
2035(301412)

OFFICE OF PETITIONS

ON PETITION

This is a decision on the "Petition to Withdraw Holding of Abandonment under 37 C.F.R. 1.181," filed March 28, 2008.

This Petition is hereby granted.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed March 23, 2007. The Office action set a three (3) month period for reply. No response having been received, the application became abandoned on June 24, 2007. A Notice of Abandonment was mailed October 19, 2007.

With the present petition, Applicant has demonstrated non-receipt of the Office action by a preponderance of the evidence¹.

In view of the foregoing, the petition is granted. The holding of abandonment is hereby withdrawn. No petition fee has been charged and none is due.

Power of Attorney and Correspondence Address

1. Power of Attorney

A review of Office records reveals that the Combined Declaration and Power of Attorney filed December 20, 2004, was not in fact a power of attorney. 37 CFR 1.32 defines a power of attorney as "a written document by which a principal authorizes one or more patent practitioners or joint inventors to act on his or her behalf." The Combined Declaration and Power of Attorney filed December 20, 2004 failed to authorize any patent practitioners or joint inventors to act on

¹ A review of Office records reveals that the Office action was inadvertently mailed to an incorrect correspondence address.

behalf of the inventors (principals). The Combined Declaration and Power of Attorney filed December 20, 2004 only identified a correspondence address and directed telephone calls to Paula Campbell Evans².

Office records also reveal that Applicant filed a document requesting this Office to include 10 patent practitioners to be recognized by the Office as being of record in this application; however, the document is unexecuted. Moreover, effective June 25, 2004, the associate power of attorney practice was eliminated. The Office no longer accepts a power of attorney signed by a principal to name an associate power of attorney. An appointment of an associate power of attorney filed on or after June 25, 2004 will not be accepted. MPEP 402.02.

2. Correspondence Address Change

Applicant filed a change of correspondence address on February 6, 2008. A review of Office records reveals that no power of attorney has been filed giving the person signing the change of correspondence address the authority to change the correspondence address. The applicable rule, 37 CFR 1.34, Acting in a representative capacity, states:

When a patent practitioner acting in a representative capacity appears in person or signs a paper in practice before the United States Patent and Trademark Office in a patent case, his or her personal appearance or signature shall constitute a representation to the United States Patent and Trademark Office that under the provisions of this subchapter and the law, he or she is authorized to represent the particular party on whose behalf he or she acts. In filing such a paper, the patent practitioner must set forth his or her registration number, his or her name and signature. Further proof of authority to act in a representative capacity may be required.

However, the authority to represent a party before this Office does not extend, inter alia, to the authority to change the correspondence address. The MPEP further explains as follows:

In accordance with 37 CFR 1.34, a paper filed by a registered patent attorney or agent in an application in which he or she is not of record must include his or her name and registration number with his or her signature. Acceptance of papers filed in patent applications and reexamination proceedings by registered attorneys and agents upon a representation that the attorney or agent is authorized to act in a representative capacity is for the purpose of facilitating replies on behalf of applicants in patent applications and, further, to obviate the need for filing powers of attorney in individual applications or patents when there has been a change in composition of law firms or corporate patent staffs. Interviews with a registered attorney or agent not of record will, in view of 35 U.S.C. 122, be conducted only on the basis of information and files supplied by the attorney or agent. A person acting in a representative capacity may not sign (A) a power of attorney (37 CFR 1.32(b)(4)), (B) a document granting access to an application (except where an executed oath or declaration has not been filed, and the patent practitioner was named in the papers accompanying the application papers - 37 CFR 1.14(c)), (C) a

² In a telephone conversation with Petitioner herein on or about April 29, 2008, Petitioner noted that page two (2) of the Combined Declaration and Power of Attorney filed December 20, 2004, appeared to have been omitted.

change of correspondence address (except where an executed oath or declaration has not been filed, and the patent practitioner filed the application - 37 CFR 1.33(a)), (D) a terminal disclaimer (37 CFR 1.321(b)(1)(iv)), or (E) a request for an express abandonment without filing a continuing application (37 CFR 1.138(b)).

MPEP 402.

Once an executed oath/declaration has been filed, the MPEP 601.03 provides:

Where a correspondence address has been established on filing of the application or changed pursuant to 37 CFR 1.33(a)(1) (prior to the filing of an executed oath or declaration under 37 CFR 1.63 by any of the inventors), that correspondence address remains in effect upon filing of an executed oath or declaration under 37 CFR 1.63 and can only be subsequently changed pursuant to 37 CFR 1.33(a)(2). Under 37 CFR 1.33(a)(2), where an executed oath or declaration under 37 CFR 1.63 has been filed by any of the inventors, the correspondence address may be changed by (A) a patent practitioner of record, (B) an assignee as provided for under 37 CFR 3.71(b), or (C) all of the applicants (37 CFR 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with 37 CFR 3.71. See 37 CFR 1.33(a)(2).

A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise properly instructed, all future correspondence regarding this application will be mailed solely to the address of record.

The application will be referred to Technology Center Art Unit 1634 for re-mailing of the Office action and re-setting the period for reply.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


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